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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

Tony J. FLIPPEN,)	Civil Action No. 7:10-cv-00537
Plaintiff,)	<u>ORDER ADOPTING REPORT</u>
v.)	<u>AND RECOMMENDATION</u>
MICHAEL J. ASTRUE,)	By: Judge James C. Turk
Commissioner of)	
Social Security,)	Senior United States District Judge
Defendant.)	

ORDER

Plaintiff Tony J. Flippen brings this action for review of the Commissioner of Social Security's final decision denying his claim for disability insurance benefits under the Social Security Act, as amended, 42 U.S.C. §§ 416 and 423. The Court referred the matter to United States Magistrate Judge B. Waugh Crigler for a Report and Recommendation, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge subsequently filed a report finding that the Administrative Law Judge's ("ALJ") decision was not supported by substantial evidence. Specifically, Magistrate Judge Crigler concluded that the ALJ's decision to discredit the opinions of Dr. Robert Benish, M.D., the Plaintiff's treating gastroenterologist, opinions on the basis that "only Benish's nurse practitioner has seen the claimant recently" was not supported by substantial evidence. (R. 20). The Magistrate Judge, therefore, recommended that the Court remand the case back to the Commissioner of Social Security pursuant to sentence four of 42 U.S.C. § 405(g) for further consideration of Dr. Benish's opinion.

Following the issuance of the Report and Recommendation, the parties were entitled to note any objections within fourteen (14) days. Fed. R. Civ. P. 72(b). The

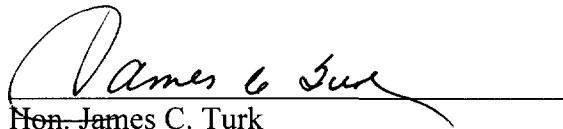
Court received no such objections. As a result, and after having reviewed the Magistrate Judge's Report and Recommendation and pertinent portions of the record, the Court agrees with the Magistrate Judge's recommendation. Accordingly, it is hereby

ORDERED and ADJUDGED

that the Magistrate Judge's Report and Recommendation is **ADOPTED** and the case be remanded to the Commissioner of Social Security for further consideration consistent with the Report and Recommendation.

The Clerk of Court is directed to send copies of this Order to counsel of record for all parties. The Clerk is further directed to strike this case from the Court's active docket.

ENTER: This 28th day of November, 2011



Hon. James C. Turk
Senior United States District Judge